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| 10/016,964 | 12/14/2001 | Heidi Riedel | Beiersdorf 755-KGB | 7321 |
| 7055 7590 07/23/2009 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191 | | | EXAMINER KANTAMNENI, SHOBHA | |
| | | | ART UNIT 1617 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/016,964 | Applicant(s) RIEDEL ET AL. | |
| | Examiner Shobha Kantamneni | Art Unit 1617 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-41, 44 and 45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) NONE is/are allowed.
- 6) ☒ Claim(s) 18-41, 44, 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/02/2009 has been entered.

Applicant's amendment filed on 07/02/2009, wherein independent claims 42, 43 have been cancelled, and new claims 44 and 45 have been added.

Currently, claims 18-41, and 44-45 are pending in this application, and examined herein.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-20, 25, 27-33, 35, 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Beutler et al. (US 4,808,388, PTO-1449).

Beutler et al. discloses foamable cosmetic creams for application onto the skin, comprising oil-in-water emulsion. The composition or preparation therein comprises 2 to

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9 % by weight of emulsifying agent such as PEG glyceryl stearate, PEG 9-stearate, cetareth-12 (PEG-12-cetyl stearyl ether), and mixtures thereof; 0.5 to 4.5 % by weight of consistency-providing agent, a combination of cetearyl alcohol and stearic acid; 4.5 to 21 % by weight of oil portion selected from fatty substances such as vegetable and mineral oil, liquid fatty alcohols, and liquid waxes; and gases such as N₂O, CO₂. See column 2, lines 3-10; lines 28-50. A composition comprising 2.0 % by weight of cetareth-12 (PEG-12-cetyl stearyl ether), 1.0 % by weight of cetearyl alcohol, and 2.5 % by weight of stearic acid, and 2 to 3.2 % by weight of a gas such as N₂O, CO₂ is disclosed. See Example 7/2; column 20, claims 1-4. The composition therein comprises a total of 2.5 % to 13.5 % by weight of polyethoxylated fatty acid esters, cetearyl alcohol, and stearic acid. A method of preparing said compositions is also taught. Beutler et al. in Example 5/1a and Example 5/1b also discloses a composition comprising 5 % by weight of TEA-Stearate (Triethanolamine Stearate) i.e wholly or partially neutralized fatty acid instant emulsifier A, 0.5 % by weight of polysorbate 20 (PEG 20 sorbitan monolaurate) i.e instant emulsifier B, 1% by weight of cetyl alcohol i.e instant emulsifier C, lanolin alcohol, 0.25 % of sodium Laureth sulphate, and N₂O or CO₂ as the gas. The total concentration of emulsifiers A to C in Examples 5/1a and 5/1b is between 2 % to 20 % by weight, which meets the instant claims. See Examples 5/1a and Example 5/1b, Example 6/1column 13-14. The amount of the gaseous propellant is about 1 to 4 % by weight. See column 4, lines 34-44.

Thus, Beutler et al. anticipates instant Claims 18-20, 25, 27, 28-33, 35, 36.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-23, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beutler et al. as applied to claims 18-20, 25, 27, 28-33, 35, 36 above.

Beutler et al. is applied as discussed above.

Beutler et al. do not expressly disclose the particular ratios of a, b, c as in claims 21-23, and the amount of gas as between 10 % to 90 % by volume.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to optimize the amounts of a, b, and c. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to optimize the the amount of gas.

The optimization of the ratio of a:b:c, and the amount of gas based on the prior art teachings, is considered well within conventional skills in cosmetic science, involving merely routine skill in the art.

It has been held that it is within the skill in the art to select optimal parameters, such as amounts of ingredients, in a composition in order to achieve a beneficial effect. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

Response to Arguments

Applicant's arguments have been considered, but not found persuasive as discussed above in the rejection and those found below.

Applicant argues that "Even if one were to assume, arguendo, that a combination of Examples 7/2 and 4/2 of BEUTLER is able to anticipate a preparation which comprises emulsifiers A to C, it is not seen that BEUTLER contains any disclosure which in combination with Example 7/2 thereof predominantly relied on by the Examiner necessarily results in a total concentration of emulsifiers A to C of from 2 % to 20 %, 5 % to 15 % by weight or 8 % to 13 % by weight." In response, it is pointed out that Beutler et al. discloses broadly self foaming and/or foam-like cosmetic compositions or preparation comprising 2 to 9 % by weight of nonionic emulsifying agents such as PEG glyceryl stearate, PEG 9-stearate, and mixtures thereof; 0.5 to 4.5 % by weight of consistency-providing agent, a combination of cetearyl alcohol and stearic acid; and gases such as N₂O, CO₂. Beutler et al. in Example 5/1a and Example 5/1b also discloses a composition comprising 5 % by weight of TEA-Stearate (Triethanolamine Stearate) i.e wholly or partially neutralized fatty acid instant emulsifier A, 0.5 % by weight of polysorbate 20 (PEG 20 sorbitan monolaurate) i.e instant emulsifier B, and 1% by weight of cetyl alcohol i.e instant emulsifier C, and N₂O or CO₂ as the gas. The total concentration of emulsifiers A to C in Examples 5/1a and 5/1b is between 2 % to 20 % by weight, which meets the instant claims. See Examples 5/1a and Example 5/1b, column 13-14. Thus, Beutler et al. clearly anticipates instant claims 18-20, 25, 27, 28-33, 35, 36.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-24, 28-31, 34, 36-39, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellon et al. (FR 2,789,397 with English translation of record).

Bellon et al. exemplify a facial foam composition or preparation comprising 22% PEG-100 stearate/glyceryl stearate combination from SEPPIC which is a polyethoxylated fatty acid ester in the instant claim 18 (I)-B: stearate having a chain 18 carbons and 100 of ethoxylation; 12% stearic acid which is a fatty acid in the instant claim 18 (I)-A: stearic acid having a chain 18 carbons; 6% octyldodecanol, which is a fatty alcohol in the instant claim 1 (I)-C having a chain 20 carbons; nitrogen added to the composition in 70% by volume which is one gas in claim 18 (II). See Example 1 and Table 1 (at page 10-11 and 16 of the English translation). The claims therein recite a method of caring for skin comprising applying the composition to the skin. Bellon et al. disclose that the lipid phase in Example 1 which is phase A, is 40.7% of total weight which is obtained from the sum total of phase A (see page 11). Fatty acids such as stearic acid, myristic acid, acids of lauric, cetyl, palmitic, oleic are taught. It is also taught that lipophilic phase that includes the fatty acids represent 30 % of the lipophilic

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mass, and this lipophilic phase represents 5 % to 25 % by weight of the total composition. See page 5 of the English translation. A gas such as air, nitrogen in the amount of 10 to 90 % by volume of the composition is taught. See page 5 of the English translation. The compositions therein possess properties such as light appearance, good spreading power, quick penetration during use, non-greasy and non-sticky sensation to the skin after application. See page 4 of the English translation. The compositions therein can comprise additional emulsifiers such as for example glycerol stearate. See page 13, Example 2. See Example 3, wherein PEG-7 glycerylcocotate is present in an amount of 2.0 %.

Bellon et al. lacks a specific exemplification, wherein the total amount of emulsifiers A, B, and C is from 2 % to 20 % by weight as in claims 18; from 5 % to 15 % as in claims 28 and 37; and from 8 % to 13 % by weight as in claim 29. Bellon et al. do not expressly disclose a ratio of a:b:c of 1:1:1.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to optimize the total amounts of a, b, and c, and a ratio of a:b:c of 1:1:1.

It would have been obvious to a person of ordinary skill in the art at the time of invention was made to exemplify a composition wherein the total amount of emulsifiers A, B, and C is from 2 % to 20 % by weight as in claims 18; from 5 % to 15 % as in claims 28 and 37; from 8 % to 13 % by weight as in claim 29, using the teachings of Bellon et al. with the expectation of achieving a cosmetically acceptable form of a foam that has a light texture and does not leave a residual greasy or sticky film.

Moreover, the optimization of the ratio of a:b:c based on the prior art teachings, is considered well within conventional skills in pharmaceutical science, involving merely routine skill in the art.

It has been held that it is within the skill in the art to select optimal parameters, such as amounts of ingredients, in a composition in order to achieve a beneficial effect. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

The recitation “wherein the preparation comprises up to 30 % by weight, based on a total weight of the preparation, of a lipid phase comprising one or more nonpolar liquids”, and “wherein the preparation comprises up to 40 % by weight, based on a total weight of the preparation, of a lipid phase, of polar liquids” in claims 19-20 reads on 0 % weight of nonpolar liquids, and polar liquids.

Response to Arguments

Applicant argues that “the substance used in Example 1 of BELLON is not merely PEG-100 stearate, but PEG-100 stearate glyceryl stearate, the specific structure of which is unknown to Appellants.”

In response, it is pointed out that PEG-100 stearate/glyceryl stearate combination from SEPPIC is a polyethoxylated fatty acid ester, PEG-100 refers to polyethylene glycol comprising 100 ethylene glycol units. Thus, PEG-100 stearate/glyceryl stearate taught by BELLON in Example 1 reads on instant emulsifier B which is a polyethoxylated fatty acid ester.

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Applicant argues that “the fact remains that the total concentration of emulsifiers A to C according to Example 1 of BELLON is $22 \% + 12 \% + 6 \% = 40 \%$. Even if it is taken into account that the total concentrations indicated in Example 1 Bellon add up to a little over 120 %, the total concentration of emulsifiers A to C, normalized to 100 % would still be about 33 %; i.e., more than one and a half times the total concentration of 20 % by weight recited in present independent claims 18, and more than twice the total concentration of 15 % by weight recited in present independent claim 37.”

In response, it is pointed out that Bellon et al. teach that lipophilic phase that includes the fatty acids represents 5 % to 25 % by weight of the total composition. Bellon et al. exemplify a facial foam composition or preparation comprising 22% non-ionic emulsifier, PEG-100 stearate/glyceryl stearate which is a polyethoxylated fatty acid ester, 12% stearic acid which is a fatty acid, 6% octyldodecanol. Bellon et al. in addition to the face care foam in Example 1, Bellon also discloses shaving foam in Example 3 comprising 12.00 % by weight of stearic acid i.e instant emulsifier A, 2.0 % by weight of non-ionic emulsifier, PEG-7 glycerylcocoate i.e instant emulsifier B, 4.0 % by weight of decylglucoside i.e instant coemulsifier C, and nitrogen. Bellon et al. teach that the total concentration of emulsifiers A to C in Example 3 is about 18 %, and thus meets the instant total concentration of 2-20 % by weight as in instant claims 18. It is pointed out that Bellon et al. disclose a substantially similar emulsifier system to the one claimed herein having all three essential ingredients. As shown by the Examples in Bellon the amounts of A, B, and C can be varied to obtain the desired benefits. Thus, it would have been obvious to a person of ordinary skill in the art at the time of invention was made to

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exemplify a composition wherein the total amount of emulsifiers A, B, and C is from 5 % to 15 % as in claims 28 and 37; from 8 % to 13 % by weight as in claim 29, because Bellon et al, teach that lipophilic phase that includes the fatty acids represents preferably from 5 % to 25 % by weight of the total composition. Thus, there is clear motivation to optimize parameters such as A, B, and C to obtain the composition with beneficial properties.

Further, the concentration of each individual emulsifier, and the total concentration by weight of all three emulsifiers in the compositions of Bellon et al., these parameters are considered to be result effective variable that would have been routinely optimized by one of ordinary skill in the art at the time of invention was made with the expectation of achieving a cosmetically acceptable form of a foam that has a light texture and does not leave a residual greasy or sticky film. It is well known in the art of cosmetic formulations the concentration of each individual emulsifier that one would employ depends on the HLB values of the emulsifier i.e the number of ethylene glycol units, the length of carbon chain on the fatty acid etc. The concentration of the emulsifiers directly effect the final physical properties of the foam such as foam stiffness, emulsion stability, wetting properties etc. Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of invention was made to manipulate the concentration of emulsifiers based on the fact that these parameters are recognized as result effective and would have been routinely optimized to obtain a cosmetically acceptable form of a foam.

Finally, it is pointed out that the optimization of the amounts of the emulsifiers in a cosmetic composition, is considered well within conventional skills in cosmetic science, involving merely routine skill in the art. It has been held that it is within the skill in the art to select optimal parameters, such as amounts of ingredients for example emulsifiers, in a composition in order to achieve a beneficial effect. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-27, 32, 33, 40, 41, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellon et al. as applied to claims 18-24, 28-31, 34, 36-39, 44 above, and further in view of Synder (4,708,813).

Bellon et al. is applied as discussed above.

The reference lacks a hydrophilic emulsifier.

Bellon et al. does not teach the particular alcohols such as cetyl alcohol, and stearyl alcohol in the composition therein.

Synder teaches a nonlathering cleansing mousse with skin conditioning benefits. Sorbitan monostearate is taught as a surfactant that provides skin cleansing benefits

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and imparts a uniform dispersion of emollient and other ingredients in the composition. Surfactants are disclosed as comprising 1.5-15% of the composition. See abstract; Col. 4, line 26-Co1. 5, line 24. Fatty alcohol foam modifiers, which are C12-C22 saturated chain fatty alcohols, for example cetyl alcohol, stearyl alcohol, lauryl alcohol, and mixtures thereof are taught. It is taught that these fatty alcohol enhance the stability of the mousse, and provide emollient effect on the skin. The fatty alcohols are present in an amount of 1 % to about 4 % in the composition. See column 3, lines 30-45.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the sorbitan monostearate of Synder to the composition of Bellone et al. because of the expectation of achieving a composition with greater skin cleansing benefits and which imparts uniformity to the emulsion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ fatty alcohols such as cetyl alcohol, stearyl alcohol in the composition of Bellone et al.

One of ordinary skill in the art would have been motivated to employ cetyl alcohol, stearyl alcohol as fatty alcohols with the expectation of obtaining a stable composition which provides emollient effect on the skin as taught by Synder.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bellone et al. as applied to claims 18-24, 28-31, 34, 36, 37-39, 44 above, in view of Saint-Leger et al. (5,939,077).

Bellone et al. is applied as discussed above. The reference lacks carbon dioxide.

Saint-Leger et al. teach cosmetic compositions. Carbon dioxide and nitrogen are taught as interchangeable gases that are used in producing cosmetic foams. See Col. 4, lines 7-15.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the nitrogen of Bellone et al. for carbon dioxide because Saint-Leger et al. teach carbon dioxide and nitrogen as equivalent gases for use in producing cosmetic foams.

Response to Arguments

Applicant argues that “BELLON is directed to compositions in the form of a foam (see, e.g., claims of BELLON). In contrast, SNYDER is directed to non-lathering compositions (see, e.g., title of SNYDER)”, and thus Bellon in view of Synder does not render the subject matter of claims 25-27, 32, 33, 40, 41 obvious.

In response, it is pointed out that Synder has been cited for its teachings that sorbitan monostearate is a known emulsifier as a surfactant that provides skin cleansing benefits and imparts a uniform dispersion of emollient and other ingredients in the composition. Sorbitan monostearate is known to be used in many known skin cleansing compositions or products. Surfactants are disclosed by Synder as comprising 1.5-15% of the composition in a cleansing mousse with skin conditioning benefits. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the sorbitan monostearate of Synder to the composition of Bellone et al. because of the expectation of achieving a composition with greater skin cleansing benefits and which imparts uniformity to the emulsion. Thus, Bellon et al. in view of Synder has

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clearly provided the knowledge which was generally available, and within the level of ordinary skill at the time, and render the subject matter of claims 25-27, 32, 33, 40, 41 obvious.

Applicant argues that “essential component of the compositions of BELLON is a fatty acid (see, e.g., claim 2 and page 5, last paragraph of BELLON). SNYDER on the other hand, does not even appear to mention fatty acids.” In response, it is pointed out that as discussed above Synder’s reference was employed for its teachings that fatty alcohols and fatty acid esters of sorbitan are well known to be used in skin care products and provide skin cleansing benefits. Synder’s reference need not mention fatty acids.

Applicant argues that “sorbitan and sorbitol are apparently not the same. This is yet another reason why BELLON in View of SNYDER fails to render obvious claims 26 and 41. In response, it is pointed out that Snyder’s reference was employed for its teachings that fatty acids of sorbitol or dehydration products of sorbitol such as sorbitan are employed as surfactants in the compositions of Snyder. See column 5, lines 53-61 of Snyder, wherein is taught that fatty acid esters of sorbitol or sorbitan are employed in as surfactants. Thus, the surfactants taught by Synder meet the broad recitation of hydrophilic emulsifiers in instant claims 25, 40, and also the narrow limitation i.e fatty acids esters of sorbitol as in instant claims 26 and 41. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the sorbitan monostearate or fatty acid esters of sorbitol of Synder to the composition of Bellone et

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al. because of the expectation of achieving a composition with greater skin cleansing benefits and which imparts uniformity to the emulsion.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-20, 24-28, 30-37, 44-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Penska et al. (EP 0 938 890 or US 5,851,544, PTO-1449, IDS filed on 06/20/2006).

Penska et al. that discloses skin care compositions containing a liquid, inert, hydrofluorocarbon infused with carbon dioxide. The compositions therein comprise 3 % by weight of stearic acid, 0.5 % by weight of cetyl alcohol, 0.5 % by weight of peg-100 stearate. See paragraphs [0016], [0019], [0072] to [0073], EXAMPLES 6-7. The method of preparing said compositions is also disclosed. Suitable fatty acids and alcohols include compounds having 10 to 20 carbon atoms such as cetyl, myristyl, palmitic and stearyl alcohols and acids. See paragraph [0028]-[0031]. Penska et al. et al. discloses that the emollients may range from 0.5 to 50 % by weight of the total composition.

Penska discloses it is advantageous to infuse the fluorocarbon prior to its incorporation in a final composition due to the easier carbonation when bubbling

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through a low viscosity fluid rather than through a more viscous final composition. To maximize carbon dioxide delivery, infusion of carbon dioxide is done preferably until the fluorocarbon is totally saturated with carbon dioxide. The fluorocarbon in the inventive composition carries typically 50% to 250%, preferably from 100 to 250%, most preferably from 140 to 250% its volume in carbon dioxide at 37 C. See paragraph [0019].

Example 6 comprises 50% perfluorodecane infused with carbon dioxide; 0.2% xanthan gum (hydrocolloid); 1% titanium dioxide; 3% stearic acid (A); 0.5% cetyl alcohol (C); tocopherol (antioxidant); 0.5% sodium PCA (humectant moisturizer); 0.5% glyceryl stearate (hydrophilic surfactant), and 0.5% PEG-100 stearate (B); among other components. Note using the lower 50% of carbon dioxide infused in the fluorocarbon, the weight percent of carbon dioxide in the composition is 12.5%.

Example 7 discloses 30% perfluorotributylamine infused with carbon dioxide; 0.5% hydroxyethylcellulose (hydrocolloid); 3% isostearic acid; 0.5% cetyl alcohol; 1% glycerin (moisturizer); 1% PEG-40 stearate; 1% sorbitan stearate, and 1% PEG-100 stearate; 2% petrolatum; 1% sorbitan stearate (instant hydrophilic emulsifier); and 5% isopropyl palmitate (ii); among other components.

Thus, Penkas et al. anticipates instant claims 18-20, 24-28, 30-37, 44-45.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-23, 29, 38-39, 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Penska (EP 0 938 890 or 5,851,544) as applied to claims 18-20, 24-28, 30-37, 44-45 above.

Penska et al. is applied as discussed above.

Penska et al. lacks a specific exemplification, wherein the total amount of emulsifiers A, B, and C is from 8 % to 13 % by weight as in claim 29.

Penska does not exemplify the instant particular ratios of a, b, c.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the instant ratio since Penska teaches the general range of each component (a) to (c) wherein the oily material including the fatty acids (a) and fatty alcohols (c) may be used in an amount of 5-50%. Therefore, it is within the skill of an artisan to optimize these ratios of the (a) to (c) to yield the appropriate emulsion stability and prevent phase separation. "The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages.". In re Hoeschele, 406 F.2d 1403, 160 USPQ 809(CCPA 1969).

Conclusion

No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shobha Kantamneni whose telephone number is 571-272-2930. The examiner can normally be reached on Monday-Friday, 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, Ph.D can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shobha Kantamneni, Ph.D
Patent Examiner
Art Unit 1617.
/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617

Search Notes (continued)

Application/Control No.

10/016,964

Examiner

Shobha Kantamneni

Applicant(s)/Patent under
Reexamination

RIEDEL ET AL.

Art Unit

1617

SEARCHED

| Class | Subclass | Date | Examiner |
|-------|----------|-----------|----------|
| 424 | 401 | 7/10/2009 | KS |
| 514 | 506 | 7/10/2009 | KS |
| 514 | 723 | 7/10/2009 | KS |
| 514 | 724,762 | 7/10/2009 | KS |
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INTERFERENCE SEARCHED

| Class | Subclass | Date | Examiner |
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**SEARCH NOTES
(INCLUDING SEARCH STRATEGY)**

| | DATE | EXMR |
|-------------------------|-----------|------|
| Inventor search updated | 7/10/2009 | KS |
| Search updated | 7/10/2009 | KS |
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